

DISTRICT OF COLUMBIA
Office of Administrative Hearings
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WILFORD GOURDINE and
MARYLAND K. GOURDINE,
Housing Providers/Petitioners,

v.

TENANTS OF 425 EVARTS STREET, N.E.,
Tenants/Respondents.

RH-SR-07-20111
In re: 425 Evarts Street, N.E.

FINAL ORDER

I. Introduction

This matter came before the Office of Administrative Hearings (OAH) on a petition to rehabilitate a four-unit apartment building at 425 Evarts Street, N.E., pursuant to D.C. Official Code § 42-3502.14. Housing Provider Wilford Gourdine filed a Substantial Rehabilitation (SR) Petition with the Department of Consumer and Regulatory Affairs (DCRA) on March 28, 2007. Because all four units are occupied, all Tenants at the Property are Respondents in this action. A hearing was held on January 8, 2008. Wilford Gourdine testified in support of the petition. Felicia Brown-Gray, daughter of a Tenant in Unit 2, testified that she did not oppose the petition and that the building is in need of repairs. Caroline Johnson, Tenant in Unit 4, and Kendall Dorman, an architect, testified against the SR Petition.

At the hearing, Petitioners Wilford and Maryland Gourdine appeared *pro se*. Jennifer L. Berger, Esq., AARP Legal Counsel for the Elderly, and Nathan Fennessy, Esq., appeared for Tenant Respondent Johnson.

II. Findings of Fact

1. The property at issue is an apartment building at 425 Evarts Street, N.E., (Property) built in 1937, that has four rental units with interior and exterior common areas.
2. Tenants in Apartments 1, 2, and 4 pay \$425 per month; the Tenant in Apartment 3 pays \$600. Tenants pay energy bills.
3. The value of the Property is \$384,740 according to a 2007 tax assessment. Fifty percent of that figure is \$192,370.
4. Housing Providers, Wilford and Maryland Gourdine, have owned the Property at 425 Evarts Street, N.E. since 1971. They own more than four rental units in the District of Columbia.
5. Wilford Gourdine served each tenant with his proposal and SR Petition, filed on March 28, 2007.
6. No housing code violations exist at the Property.

A. Expert testimony

7. Wilford Gourdine testified as his own architectural expert. He has been the owner and manager of the Property since 1971. Mr. Gourdine has been licensed in the District of Columbia as an architect since 1972 and worked for the District of Columbia from 1971 to 1994. Mr. Gourdine

holds Bachelor of Architecture and Master of City Planning degrees. He drafted the plans at issue.

8. Kendall Dorman testified on behalf of Tenant Johnson. Mr. Dorman, qualified as an expert architect, has been licensed as an architect in the District of Columbia since 1990. The primary focus of his practice is on residential and small community structures. He is experienced in reviewing renovation plans and related costs.
9. Mr. Dorman inspected Apartments 3 and 4 and the exterior of the building. He reviewed Petitioners' plans, scope of work and estimated costs. In Mr. Dorman's opinion, it would be more convenient, but not necessary, to complete renovations after tenants vacate.
10. Mr. Dorman found no major damage or cause for concern.

B. The Property

11. Since construction of the building in 1937, no comprehensive rehabilitation of the Property has occurred.
12. Kitchens in the rental units have original cabinetry; bathrooms have original sinks, lavatories and bathtubs.
13. Electrical and plumbing systems are outdated and inefficient.
14. Some kitchens in the building have layers of vinyl floor in various states of repair.

15. Housing Providers do not have a mortgage on the property. To pay for their proposed rehabilitation, they would obtain two mortgages, one for \$112,710 and the other for \$225,420.
16. Housing Providers' proposal requires the residents to vacate the building for at least eight months while total renovations are undertaken.
17. Under the proposal, rents would increase 109% after the rehabilitation in Apartments 1, 2 and 4, from \$425 per month to \$889 per month. In Apartment 3, rent would increase 50% to \$899. Petitioners' Exhibit (PX) 13.
18. No phase-in period is provided for the proposed rent increase.

C. Proposed Work

19. The Gourdine SR proposal includes work in the following areas.
20. Windows: Housing Providers propose to replace windows, which are original, with thermal-paned windows at a total cost of \$18,000.
21. Demolition costs total \$8,400, which includes the removal of all walls and ceilings.
22. Bathroom: Housing Providers propose to replace bathroom fixtures at a cost of \$4,800. They have not replaced the bathroom appliances in any of the rental units at any time during their ownership. Bathtubs and

bathroom sinks are original. Medicine cabinets and bathroom piping likely date back to 1937. Sinks are chipped.

23. Kitchen: Housing Providers intend to replace appliances, install a counter in each kitchen, and replace the flooring. The proposal includes \$380 for accessories, \$16,400 for cabinets (\$4,100 per unit), \$380 for garbage disposals, \$3,920 for flooring and \$6,400 for appliances. Kitchen cabinetry in the units is original. The cost proposed for new cabinetry is that for a luxury upgrade, although the type of cabinetry is not specified in the proposal.
24. In the rental unit kitchens, appliances have been replaced as necessary. The oldest stove is 25 years old; the other three are six to 10 years old. Refrigerators are seven years old. None of the kitchens has a counter. Tenants improvise by using other items, such as the top of an inoperable portable dishwasher. Kitchen sinks are original, double sinks that work well.
25. The kitchen floors in Apartment 1 and 3 have been replaced within the past 20 years. The kitchen floor in Apartment 2 was replaced within the past five years because of water heater leaks. Flooring in Apartment 4 kitchen has never been replaced.
26. Doors: Doors leading from the outside and to each unit are original, solid wood. The proposal includes replacing all interior doors at a cost of \$2,600 and apartment entrance doors at \$2,200. However, there is no

problem with the doors as they are. Latches, hinges, handles and frames are intact and functional.

27. The exterior door would be replaced with a glass door connected to each rental unit by phone for security purposes.
28. Wood Flooring: Original hard wood flooring covers most of each unit. Housing Providers plan to remove the existing flooring down to bare joists in the rental units with a surface expected to last forty years at a cost of \$2,600.
29. Common areas: The proposal includes smoke detectors in the common area to meet current housing code. Although no housing code violation exist, this area received approval because of an exception available for an older building.
30. The front entrance and stairway were painted three years ago; the rear entryway and stairway are in need of paint as they were last painted 15 years ago. Indoor painting costs total \$3,600.
31. Plumbing, Heating and Air Conditioning: The proposal includes installation of a new air conditioning system for \$6,000, replacement of outdated plumbing for \$19,200, and a new heating system for \$18,000.
32. Rental units have radiators for heat and window air conditioning units. In its current condition, the building has no mechanical ventilation. The steam heat is inconsistent and inefficient.

33. Electrical System: The proposal seeks a total of \$27,000 for electrical upgrades: \$14,000 for the units and \$13,000 for new electrical service under the category of site work. Housing Providers plan to install new electrical outlets and circuit breakers as well as new wiring.
34. Roof: Part of the roof on the Property is 70 years old. Part is 10 years old. The Proposal lists replacing the roof at a cost of \$12,500 for the roof and gutters and \$7,000 for fascia, soffits and caulking.
35. The remaining costs are \$20,000 for structural work; \$300 for exterior painting; \$600 for paving; \$1,400 for hardware; \$360 for shelving; \$5,000 for landscaping; \$1,600 for insulation; \$1,000 for permits and fees; and miscellaneous charges of \$3,200.
36. Petitioners presented a Bid Proposal from J & A General Contractors dated October 3, 2007 stating in its entirety: "After a careful review of architectural plans, specifications, and a two page scope of work for 425 Evarts Street, N.E. Washington, D.C. We estimate project completion cost of \$264,890.00. It will take approximately (7) months to complete the project." PX 10 at 4.

III. Discussion and Conclusions of Law

Because Petitioners own more than four rental units in the District of Columbia, they are not exempt from the Rental Housing Act, even though the

Property at issue in this case has only four units. D.C. Official Code § 42-3502.05 (a)(3).

To meet their burden of proof and receive approval for the hardship petition Housing Providers must 1) produce for examination the “plans, specifications, and projected costs for the rehabilitation;” and 2) prove that “rehabilitation is in the interest of the tenants of the unit and the housing accommodation in which the unit is located.” D.C. Official Code § 42-3502.14.

The Rental Housing Commission determined:

The statutory language reveals a legislative intent to achieve a balance between the interests of landlords and tenants. It recognizes that a landlord has a right to upgrade his property by substantially rehabilitating it for which he will be entitled to raise the rents substantially and permanently. . . . In order to ensure that rent increases of that magnitude are not awarded for normal maintenance, deferred maintenance or even limited capital improvements, the rehabilitation must be truly “substantial.” . . . [S]ubstantial rehabilitation [is] an expenditure for an improvement to or renovation of a housing accommodation which exceeds 50% of its assessed value.

Tenants of 738 Longfellow Street, N.W. SR 10,102 at 5 (citations omitted), *aff’d*, *Tenants of 738 Longfellow Street, N.W. v. D.C. Rental Hous. Comm’n*, 575 A.2d 1205 (D.C. 1990).

“‘Substantial rehabilitation’ means any improvement to or renovation of a housing accommodation for which: (A) The building permit was granted after January 31, 1973; and (B) The total expenditure for the improvement or renovation equals or exceeds 50% of the assessed value of the housing accommodation before the rehabilitation.” D.C. Official Code § 42-3501.03 (34).

Two societal interests collide in this substantial rehabilitation case. On one hand, “it makes little sense to deny a landlord who has maintained his property in reasonable condition but who is faced with an older building suffering from deterioration . . . the right to substantially rehabilitate those portions that reasonably and fairly require it.” *Tenants of 738 Longfellow Street, N.W.*, 575 A.2d at 1215 (quoting *Tenants of 738 Longfellow Street, N.W.*, SR 10,102).

On the other hand, the substantial rehabilitation petition must be considered in light of the goal of the Rent Stabilization Program, “to remedy a critical social evil, namely a severe shortage of rental housing.” *Id.* at 1211. “Exemptions from coverage of the rent control statute are to be narrowly construed,” and the provision for substantial rehabilitation “ought to be given a parsimonious interpretation rather than an expansive one.” *Id.*

Housing Providers satisfied the filings requirements of D.C. Official Code § 42-3502.14(b) and the notice requirements of 14 DCMR 4212.7.

Therefore, the two elements that must be proven are substantiality and interests of the tenants.

Substantiality

To meet this requirement, the proposed rehabilitation must “equal or exceed fifty percent (50%) of the assessed value of the rental unit or housing

accommodation as determined under § 4212.5(c).” 14 DCMR 4212.8(b). In this case, the amount necessary to justify a substantial rehabilitation under the Act and regulations is \$192,370.

In compliance with D.C. Official Code § 42-3502.14(a), Housing Providers filed a list of projected costs. PX 10. Appendix A is a chart listing the costs proposed for the plans totaling \$224,580, more than the required 50%.

The cost estimates derive from Wilford Gourdine’s experience, in consultation with a contractor. Mr. Gourdine’s testimony was subject to cross-examination at the hearing. That check on the reliability was not true for the contractor who did not testify. Consequently, his conclusory report lacks persuasive authority.

Furthermore, the cost list presented by Housing Providers lacks the requisite specificity in several areas. As Tenant Johnson argues, specific estimates from contractors who would be doing the work were not provided. In some areas, the model and manufacturer of materials to be purchased, such as windows and doors, have not been identified.

Materials

The proposal does not identify the type or brand of roofing material, doors, cabinets, or windows to be used. In fact, as Mr. Dorman explained, the cost submitted for kitchen cabinets is one for a luxury upgrade.

Windows: Although none are broken, some windows are in need of latches, caulking, and weather stripping. To determine the accurate cost of replacement windows, the manufacturer make and model are necessary, but those figures have not been provided.

Doors: A specific dollar amount cannot be approved for any of the doors because cost depends on material used, information that is not contained in the proposal. However, replacement of the exterior door is necessary and in the interest of Tenant's security.

Kitchen Flooring: Housing Provider included a cost of \$3,920 for installation of new kitchen flooring, but did not specify what material would be used, a factor that will directly affect cost. Therefore, I disallow that cost.

Because prices on the items specified above vary widely, the total cost of the rehabilitation may also change once choices about brands and materials are made. Consequently, the total cost of the rehabilitation could be lower than what is stated in the petition, or it could be higher.

Construction

The walls in the building present no hazard to Tenants in their present condition. The only problems are a few thin cracks. I accept the opinion of Architect Dorman that tearing down walls is not necessary. The easiest repair would be to replace damaged areas with drywall. Therefore, the demolition figure of \$8,400, cannot be approved.

Wood floors: Housing Providers plan to replace wood floors, but are not yet sure what the new floor surface will be. The floors are in need of sanding, not replacement, as Mr. Dorman opined. Therefore, this cost must be disallowed.

The electrical system in place now, more than 35 years old, has an outdated fuse box and is limited to 60 amps. It should be replaced. However, the sums requested cannot be approved without more detail as to how the \$27,000 is allocable. Furthermore, Housing Provider has not consulted with PEPCO, a usual practice when an electrical system is to be changed.

Approved changes

Bathroom fixtures: Despite Ms. Johnson's objections to improvements in her bathroom, she and the other Tenants would benefit from the proposed upgrades in terms of hygiene and safety given the age of the fixtures and damaged tiles.

Emergency lighting: Housing Providers intend to provide emergency lighting, which at present is lacking, a necessary expenditure, although a precise cost is not specified in the proposal.

Proposed thermal-paned windows would reduce energy consumption, with resultant benefits to Tenants.

Despite Ms. Johnson's comfort with the current system, I find that the heating, air conditioning and plumbing systems are in need of updating for comfort, consistency and efficiency. I accept the costs associated with this work.

For purposes of this analysis, the remaining costs for structural work at \$20,000, exterior painting of \$300, paving of \$600, hardware of \$1,400, shelving of \$360, landscaping at \$5,000, insulation for \$1,600, permits and fees of \$1,000 and miscellaneous charges of \$3,200, are accepted as necessary for renovations and in the interest of tenants.

If the items deemed not necessary and those lacking specificity are eliminated, the total cost drops to \$137,060 (Appendix A, column X). For illustrative purposes only, if I were to accept numbers that are half of the estimates for items lacking specificity, the total would be \$169,020 (column Y). Both columns X and Y fall below 50%.

On the current record, the necessary proof of 50% of the value of the property has not been met. Therefore, Housing Providers have not met their burden on the issue of substantiality.

Interest of Tenants

Next, a showing that substantial rehabilitation is in the interests of the tenants is “indispensable before a petition may be granted.” *Longfellow*, 575 A.2d at 1215 n.13.

The following, among other factors, must be considered in determining if the rehabilitation is in the interest of the tenants of the units:

The impact of the rehabilitation on the tenants of the unit or housing accommodation; and
The existing condition of the rental unit or housing accommodation and the degree to which any violations of the housing regulations in the rental unit or housing accommodation constitute an impairment of the health, welfare, and safety of the tenants.

Id. § 42-3502.14 (c).

Other factors which may also be considered when reviewing a SR Petition are:

The existing physical condition of the rental unit or housing accommodation as shown by reports or testimony of D.C. housing inspectors, licensed engineers, architects and contractors, or other qualified experts; (b) Whether the existing physical condition impairs or tends to impair the health, safety or welfare of any tenant; (c) Whether the existing physical conditions can be corrected by improved maintenance, repair or capital improvement; and (d) The impact of the proposed rehabilitation on the tenant or tenants in terms of proposed financial cost, inconvenience or relocation.

14 DCMR 4212.9(a); see also *see Longfellow*, 575 A.2d at 1213.

Tenant Johnson asserts that she and the other tenants in the housing accommodation are “elderly tenants,” as defined in D.C. Official Code § 42-3501.03(12), and are particularly vulnerable to steep increases in rent.

The proposed increases in rent, temporary inconvenience during construction and temporary relocation will all adversely affect tenants. D.C. Official Code § 42-3502.14(d). Rents would increase by 109% in three of the four units and by 50% in the fourth unit, making a return to the building unrealistic for some, if not all, residents.

The Property needs an upgrade in the electrical system, improved security, common area improvements, cosmetic work in individual units and a new roof. However, the improvements can be accomplished with maintenance and repair without displacing tenants and without the substantial increase in rents according to the credible expert testimony of Mr. Dorman. *See* 14 DCMR 4212.9(a).

In several ways, the Petition is similar to the one approved in *Longfellow, supra*, 575 A.2d at 1215 in 1990. However, the cases are distinguishable. In *Longfellow*, the housing accommodation at issue was a four-story building with 66 apartments. In such a structure, substantial rehabilitation after tenants vacated the building was necessary. In the instant case, the proposed work can be done on the four-unit, two-story building with maintenance and repairs without displacing the tenants. As Mr. Dorman opined, it may be more convenient to do work after tenants vacate, but it is not necessary. The rent increase approved in *Longfellow* was 50%; in this case Petitioners propose a 109% rent increase for the majority of

tenants, without a phase-in and with a greater adverse effect on tenants, particularly on the elderly tenants who live at the Property.

In sum, the application for substantial rehabilitation does not meet the tests of substantiality or interests of the tenants.

IV. ORDER

Therefore, it is this 8th day of May, 2008:

ORDERED, that the application for substantial rehabilitation of the Property in Case No. RH-SR-07-20111 is **DENIED**; and it is further

ORDERED, any party may file a motion for reconsideration under 1 DCMR 2937 within ten days of service of this Final Order; and it is further

ORDERED, that the appeal rights of any party aggrieved by this Final Order are set forth below.

/s/

Margaret A. Mangan
Administrative Law Judge